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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

DR. FERN MARGOLIS, MAYER
MARGOLIS, JUAN PADILLA, ZEV
LEWINSON, EDUARDO ARANIBAR,
ELIZABETH GUIDICE, EARL
MCFARLAND, GLENNIS PARKER,
and SHAUN BIDDISCOMBE,
Individually and On Behalf of All Others
Similarly Situated,

Plaintiff,

v.

APPLE INC.

Defendants.

CLASS ACTION COMPLAINT

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1 Plaintiffs Dr. Fern Margolis, Mayer Margolis, Juan Padilla, Zev Lewinson, Eduardo
2 Aranibar, Elizabeth Guidice, Earl McFarland, Glennis Parker, and Shaun Biddiscombe
3 (“Plaintiffs”), individually and on behalf of all other persons similarly situated, as defined herein,
4 by Plaintiffs’ undersigned attorneys, for Plaintiffs’ complaint against Defendant Apple Inc.
5 (“Apple” or the “Company”), allege the following based upon personal knowledge as to Plaintiffs
6 and Plaintiffs’ own acts, and information and belief as to all other matters.

7 **I. INTRODUCTION**

8 1. Apple’s iPhone is its most important product. In 2022 alone, Apple generated over
9 \$205 billion in revenue from iPhone sales.

10 2. Every year, Apple releases a new iPhone model, along with a new version of its
11 proprietary iOS software, which is the mobile operating system for the iPhone. The iPhone is an
12 expensive product, with the latest model costing at least \$800 and some versions costing well
13 over \$1,000. Apple therefore gives its customers the ability to update their current devices with
14 the latest iOS version. This leads Apple’s customers to believe that they can continue to use their
15 current devices, at least at the same level of performance, while receiving important security
16 updates from the latest iOS version.

17 3. In 2021, Apple released iOS 15 as the latest iOS version available at the time. iOS
18 15 was the last iOS series that Apple made available for the iPhone 7 and iPhone 7 Plus (the
19 “iPhone 7 Devices”).

20 4. Apple promoted iOS 15 as improving the performance of the iPhone 7 Devices
21 and providing important security updates. The Company also incessantly told its customers to
22 download these updates by sending notifications directly to their iPhones until they downloaded
23 the latest version of iOS 15.

24 5. iOS 15, however, did not work well on the iPhone 7 Devices. Instead, it slowed
25 down their performance of basic operations across apps, as compared to prior iOS versions. This
26 operating system update also caused myriad other problems as compared to prior iOS versions,
27 such as apps freezing or crashing, the battery draining more quickly, the device taking longer to
28

1 work after booting, and the device becoming very hot, among other basic performance problems
2 in the regular usage of the iPhone 7 Devices.

3 6. Apple misrepresented these negative effects of iOS 15 on the iPhone 7 Devices.
4 The Company represented that iOS 15 would improve—or at the very least maintain—the
5 performance of these devices while providing important security updates. Apple also did not
6 warn that iOS 15 would cause the iPhone 7 Devices to suffer this significant performance
7 degradation.

8 7. iOS 15 in general was plagued by performance problems, to the point that a
9 *Forbes* article described the release as a “dumpster fire.” These problems were exacerbated on
10 the iPhone 7 Devices because of how these older devices, which Apple released in 2016,
11 interacted with the newer and more complicated software in iOS 15.

12 8. Because Apple represents to customers that they could continue using their
13 current iPhones on new iOS versions that it releases each year, the main way that Apple induces
14 customers to purchase new iPhones—the Company’s most important source of revenue—is by
15 making the model of the iPhone that it releases each year more advanced and powerful than the
16 last. For example, Apple frequently includes more powerful processing chips in newer-model
17 iPhones. Apple then makes each subsequent version of iOS more complicated and tailored to the
18 capabilities of the latest iPhone.

19 9. Older iPhone models are therefore often unable to run the latest version of iOS
20 properly. As *Apple Explained*—a popular reviewer of Apple technology—explains, “[i]f you’ve
21 updated your iPhone to a new version of iOS and felt like it became slower, you’re not alone. . . .
22 The reason your older iPhone is struggling isn’t due to faulty lines of code, but rather, a more
23 power-hungry operating system that demands more performance from the devices they run on.
24 And if your device is a few years old, this can cause some problems.”

25 10. Apple makes new iOS versions available only for certain iPhone models. But
26 Apple represents to its customers that these new versions will improve—or at least maintain—
27 the performance of all iPhone models for which they are available. Customers therefore believe
28

1 that when Apple makes a new version of iOS available for a specific iPhone model, as it did for
2 iOS 15 on the iPhone 7 Devices, that operating system will work smoothly on their devices.

3 11. The disparity between the capabilities of the iPhone 7 Devices and the latest
4 iPhone when iOS 15 was released was particularly acute. The iPhone 7 was the last iPhone that
5 included Apple's A10 Fusion chip to support the device's processing power. The iPhone 8,
6 released the following year, contained the A11 Bionic chip, which had many significant advances
7 that allowed "apps and background tasks [to] be intelligently scheduled onto the appropriate
8 cores so that power efficiency is maximized" and "includes a custom-designed graphics
9 processor that delivers a 30% performance bump from the Imagination-based processor in the
10 A10 Fusion." The processing power of iPhone chips then developed even more since Apple first
11 introduced the A11 Bionic chip in 2017. When iOS 15 was released in 2021, Apple was up to
12 the A15 Bionic chip in the iPhone 13. Moreover, the iPhone's other technological specifications
13 also developed significantly between the iPhone 7 Devices and the iPhone 13.

14 12. Apple, however, has never admitted this problem with how iOS 15 operates on
15 the iPhone 7 Devices. This serves Apple's goals because it gives customers the impression that
16 they can continue to use their older devices at least at the same level of performance while
17 receiving the benefits of a new iOS version, including important security updates. If Apple told
18 the truth, it would be admitting that it does not continue to fully support the iPhone with iOS
19 updates for as long as it leads customers to believe it does. That would remove a key feature that
20 Apple purports to provide.

21 13. Indeed, Apple represents in the iPhone User Guide that the iPhone 7 Devices are
22 "compatible" with iOS 15. Apple also promotes its general practice of allowing customers to
23 continue using their old devices by downloading new iOS updates. For example, the Company
24 has noted that "iOS pioneered this approach of helping you get more out of the device you already
25 own through free updates." In addition, Apple misrepresented how iOS 15 would perform on the
26 iPhone 7 Devices by describing its "*powerful new features that enhance how you use iPhone.*"
27 Apple emphasized the importance of downloading iOS 15 because of its "security updates" or
28

1 “fixes,” often stating that the update was “*recommended for all users*.” If Apple were instead to
2 disclose the truth about how iOS 15 performed on the iPhone 7 Devices, it would force customers
3 to choose between (1) maintaining the performance of their iPhone 7 Devices by foregoing the
4 security updates in iOS 15 that are important to Apple and (2) receiving those updates but
5 degrading the performance of their devices.

6 14. This practice of older devices (such as the iPhone 7) not working well on newer
7 iOS versions (such as iOS 15) also serves the added benefit to Apple that when customers become
8 frustrated that their iPhones are not working well anymore on the latest iOS update, they will
9 often spend substantial sums to purchase new iPhones. Regardless of whether that is Apple’s
10 intended purpose of this practice or just a natural byproduct of Apple’s actions, the fact remains
11 that Apple releases new versions of iOS that it knows will harm the performance of its customers’
12 devices and often cause them to purchase new iPhones, at great profit to Apple.

13 15. In contrast, the honest and transparent way of doing business would be for Apple
14 to warn its customers that iOS 15 would perform poorly on the iPhone 7 Devices. Customers
15 could then make an informed decision about whether to download the operating system for its
16 security updates or other purported benefits.

17 16. Apple knew how iOS 15 would perform on the iPhone 7 Devices because it is one
18 of the largest and most sophisticated companies in the world. The Company made a conscious
19 decision to make iOS 15 available for the iPhone 7 Devices, as demonstrated by the fact that this
20 is the last iOS version available for these devices. When Apple released iOS 16 in September
21 2022, it chose *not* to make that update available for the iPhone 7 Devices. Instead, Apple has
22 released new versions of iOS 15 alongside its releases of different versions of iOS 16. Apple
23 should have taken that approach a year earlier—or at least warned its customers how iOS 15
24 would perform on the iPhone 7 Devices.

25 II. JURISDICTION AND VENUE

26 17. This Court has subject-matter jurisdiction pursuant to the Class Action Fairness
27 Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action in which the matter in
28

1 controversy exceeds the sum of \$5,000,000, and Apple is a citizen of a State different from that
2 of at least one Class member.

3 18. This Court also has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331,
4 because Plaintiffs allege that Apple violated the Computer Fraud and Abuse Act, 18 U.S.C. §
5 1030, *et seq.*

6 19. This Court also has supplemental jurisdiction over the state law claims pursuant
7 to 28 U.S.C. § 1367(a) because all claims alleged herein form part of the same case or
8 controversy.

9 20. Venue is proper in this District under 28 U.S.C. § 1391(a) through (d) because
10 Apple's principal place of business is located in this District and substantial parts of the events
11 or omissions giving rise to the claims occurred in the District. Venue is also proper in this Court
12 because Apple is located here, the causes of action arose here, and the iPhone 7 Devices and iOS
13 15 at issue here have always been designed, manufactured, and tested by Apple in this District.

14 **III. PARTIES**

15 21. Plaintiff Dr. Fern Margolis has been a resident of California at all relevant times.
16 She is the owner of an iPhone 7 Device. She has suffered several significant performance
17 problems with her device since she downloaded iOS 15. For example, the Weather Channel app
18 loads very slowly, taking at least seven or eight seconds to open. She experiences similar
19 problems with Word Crossy (a cognitive strengthening game her doctor recommended that she
20 play), which operates very slowly, often stops and starts, and regularly crashes. Dr. Margolis has
21 also experienced other problems with her iPhone 7 Device since downloading iOS 15, including
22 the dictation function in iMessages constantly making significant, inexplicable errors, such as
23 changing "words" to "with," "it is" to "in," "dealer" to "wheeler," and "Tuesday" to "Who's
24 there?" These types of errors often render the dictated message both inaccurate and
25 incomprehensible. Dr. Margolis speaks very slowly and clearly, yet has noted that this function
26 on iMessage is getting progressively worse over time. Other problems that she has recently
27 encountered on her iPhone 7 Device include: having to check both her iPhone 7 Device and her
28

1 desktop computer for emails because her iPhone sporadically fails to sync new messages, often
2 not being able to delete emails on her Device using the swiping and/or delete function, news
3 articles she is reading abruptly disappear and the screen goes blank, the battery loses its charge
4 very quickly (sometimes requiring it to be charged two or three times in a single day), the device
5 getting very hot to the point where she stops using it when that occurs, and basic operations
6 suddenly stop working.

7 22. Plaintiff Mayer Margolis has been a resident of California at all relevant times.
8 He is the owner of an iPhone 7 Device. He has suffered several significant performance problems
9 with his device since he downloaded iOS 15. Plaintiff Mayer Margolis is married to Plaintiff Dr.
10 Fern Margolis and has experienced similar problems on his device to those that she has
11 experienced on her device. For example, Word Connect 2023 (a cognitive strengthening game
12 his doctor recommended that he play) has become glitchy, sometimes getting stuck between
13 advertisements and requiring a reboot. The battery of his device loses its charge very quickly and
14 requires a recharge every few hours. In addition, his device also gets extremely hot on a regular
15 basis. On September 10, 2021, Plaintiff Mayer Margolis replaced the battery of his iPhone 7
16 Device at an Apple Store for a significant additional expense, shortly before iOS 15 was released.
17 Even with this new Apple-installed battery, he still experienced all of these performance
18 degradations after downloading iOS 15.

19 23. Plaintiff Juan Padilla has been a resident of New York at all relevant times. He is
20 the owner of an iPhone 7 Device. He has suffered several significant performance problems with
21 his device since he downloaded iOS 15. These issues include the device running slowly and
22 lagging across basic operations, including with opening and closing apps. He often has to restart
23 his device to try to address this issue. He also tries to close out of apps when he is done using
24 them, but that does not redress the problem. In addition, the device sometimes crashes, with the
25 screen going black. Plaintiff Padilla has also experienced the battery of his iPhone 7 Device
26 draining more quickly since he downloaded iOS 15.

1 24. Plaintiff Zev Lewinson has been a resident of New York at all relevant times. He
2 is the owner of an iPhone 7 Device. He has suffered several significant performance problems
3 with his device since he downloaded iOS 15. For example, it takes longer to do basic operations
4 on his device than it did previously. In addition to performing more slowly and lagging,
5 applications often crash or freeze when he is using them. The device also jams up frequently.
6 The battery of his device also gets very hot when he uses it, requiring him to power down his
7 device to allow it to cool off. The battery life on his device is also very poor, requiring him to
8 constantly recharge it.

9 25. Plaintiff Eduardo Aranibar has been a resident of New York at all relevant times.
10 He is the owner of an iPhone 7 device. He has suffered several significant performance problems
11 with his device since he downloaded iOS 15. For example, his device operates slowly across all
12 functions and is oftentimes not responsive. He also experiences delays and lagging when
13 attempting to open and close all apps on his device, including Facebook.

14 26. Plaintiff Elizabeth Guidice has been a resident of New York at all relevant times.
15 She is the owner of an iPhone 7 device. She has suffered several significant performance
16 problems with her device since she downloaded iOS 15. The issues occur constantly and include
17 the device running slowly and lagging across basic operations, including with opening and
18 closing apps. For instance, when she plays games on her device they often abruptly shut down.

19 27. Plaintiff Earl McFarland has been a resident of Virginia at all relevant times. He
20 is the owner of an iPhone 7 Device. The performance of his device has degraded significantly
21 since he updated it to iOS 15. For example, web browsing has deteriorated on his device.

22 28. Plaintiff Glennis Parker has been a resident of Louisiana at all relevant times. She
23 is the owner of an iPhone 7 Device. The performance of her device has degraded significantly
24 since she updated it to iOS 15. The issues include the device constantly running slowly and
25 lagging across basic operations, including with opening, closing, and using apps. Additionally,
26 the battery on her device is very poor and is unable to hold a charge. This requires Plaintiff Parker
27 to constantly recharge the battery of her device.

29. Plaintiff Shaun Biddiscombe has been a resident of North Carolina at all relevant times. He is the owner of an iPhone 7 Device. The performance of his device has degraded significantly since he updated it to iOS 15. The device is slower and takes a lot longer to work in general. For example, he has trouble browsing in Safari, with the device being slow and non-responsive. He has also experienced this problem with other apps. Plaintiff Biddiscombe also has problems with text messages on his iPhone 7 Device, both in terms of not receiving texts and texts that he sends not going through. Further, Plaintiff Biddiscombe's iPhone 7 Device frequently closes out of the function he is using and abruptly brings him to a screen requiring him to re-enter his passcode manually to reenter the device. This forces Plaintiff Biddiscombe to restart what he was doing on his device before this abrupt and unprompted device malfunction. Plaintiff Biddiscombe also experiences issues with the battery of his iPhone 7 Device. Since his device's battery drains faster than usual, Plaintiff Biddiscombe must bring a portable charger with him whenever he knows he will not have access to an electrical outlet, to ensure his device does not lose power.

Plaintiffs Dr. Fern Margolis, Mayer Margolis, Padilla, Lewinson, Aranibar, Guidice, McFarland, Parker, and Biddiscombe are referred to collectively as "Plaintiffs."¹ They are all owners of iPhone 7 Devices who suffered significant performance degradations after they downloaded iOS 15 onto their devices. Plaintiffs continued using their iPhone 7 Devices after downloading iOS 15, despite the problems described above, because they did not want to spend the significant amount of money it would cost to purchase a new iPhone.

30. Defendant Apple Inc. is a corporation that was created under the laws of the State of California and has its principal place of business in Cupertino, California. Apple develops,

¹ In addition, Plaintiffs Dr. Fern Margolis and Mayer Margolis are referred to as the "California Plaintiffs," Plaintiffs Padilla, Lewinson, Aranibar, and Guidice are referred to as the "New York Plaintiffs," Plaintiff McFarland is referred to as the "Virginia Plaintiff," Plaintiff Parker is referred to as the "Louisiana Plaintiff," and Plaintiff Biddiscombe is referred to as the "North Carolina Plaintiff."

1 sells to consumers, markets, and directs into the stream of commerce the iPhone 7 Devices and
2 its iOS 15 operating system.

3 **IV. SUBSTANTIVE ALLEGATIONS**

4 31. Apple is one of the world’s largest developers and sellers of mobile phones and
5 other consumer electronic devices. The iPhone is Apple’s top-selling device and accounts for
6 hundreds of billions of dollars in revenue annually for the Company. In 2022, Apple generated
7 over \$205 billion in revenue from iPhone sales.

8 32. Since Apple first released the iPhone in 2007, it has generally released a new
9 iPhone model every year. All iPhones, including the iPhone 7 Devices, run on Apple’s iOS
10 software, which is Apple’s proprietary mobile operating system that serves as the operating
11 system for the iPhone. Apple generally releases a new major iOS version each year alongside its
12 release of a new iPhone model. Each annual version of iOS is designated by a number, with
13 periodic subsequent updates to that version following its initial release.

14 33. Apple provides iOS updates for free so that customers can continue to use their
15 iPhones long past their purchase. Apple advertises that iPhones will be able to run on new iOS
16 versions, which will add security enhancements and improve their devices. For example, at
17 Apple’s Worldwide Developer Conference in 2018, when Apple introduced iOS 12, Craig
18 Federighi, Apple’s SVP, Software Engineering, highlighted that “it’s easy to forget now, but iOS
19 pioneered this approach of helping you get more out of the device you already own through free
20 updates.”² Apple similarly represented in the iPhone User Guide that the iPhone 7 Devices are
21 “compatible” with iOS 15.³ At Apple’s Worldwide Developer Conference that it held online
22 from June 7, 2021 to June 11, 2021 (the “2021 Worldwide Developer Conference”), where the
23 Company introduced iOS 15, Federighi stated that “[o]ur new release is iOS 15. It’s packed with
24 features to make the iOS experience adapt to, and complement, the way you use iPhone.” He
25

26 ² <https://www.youtube.com/watch?v=UThGcWBIMpU>.

27 ³ <https://support.apple.com/guide/iphone/supported-models-iphe3fa5df43/15.0/ios/15.0>.

1 then concluded his presentation by stating, “*So that’s iOS 15, with powerful new features that*
 2 *enhance how you use iPhone.*”⁴

3 34. Apple also emphasized the importance of downloading iOS 15 because of its
 4 “features and improvements” and its “security content,” “updates,” or “fixes,” often stating that
 5 the update was “*recommended for all users.*” (See *infra* ¶¶ 47-57).

6 35. At a certain point in time, Apple stops making new iOS versions available for
 7 prior iPhone models. For example, iOS 15 is the last iOS version that works on the iPhone 7
 8 Devices. But these types of statements show that as long as an iOS version is available for a
 9 certain iPhone model, Apple represents to its customers that the new iOS version will improve—
 10 or at the very least maintain—the device’s current level of performance while providing
 11 important security updates.

12 36. Because iOS updates are free, Apple’s revenue and profits are dependent on
 13 customers purchasing new iPhones. To do this while giving customers the impression that they
 14 can continue to use their current devices if they want, Apple makes each new iPhone model more
 15 advanced than the previous one, with improvements such as greater computing or processing
 16 power, and the ability to operate new features. Apple also makes each iOS version more complex
 17 than the last and designs each new iOS version in a way that is specifically tailored to the
 18 capabilities of the latest, most advanced iPhone model.

19 **A. The iPhone 7 Devices**

20 37. Apple’s iPhone 7 Devices are the tenth generation of the iPhone. Apple began
 21 selling the iPhone 7 Devices in September 2016.

22 38. The price of a new iPhone 7 ranged from \$649 to \$849 and the price of a new
 23 iPhone 7 Plus ranged from \$769 to \$969.

24 39. When Apple released the iPhone 7 Devices, its Press Release announcing the
 25 devices, dated September 7, 2016, described them as “the best, most advanced iPhone ever,
 26

27 ⁴ <https://developer.apple.com/videos/play/wwdc2021/101/>.
 28

1 packed with unique innovations that improve all the ways iPhone is used every day.” The Press
 2 Release quoted Philip Schiller, Apple’s senior vice president of Worldwide Marketing, as stating
 3 that “iPhone 7 and iPhone 7 Plus dramatically improve every aspect of the iPhone experience,
 4 reaching a new level of innovation and precision to make this the best iPhone we have ever
 5 made.” This included “the A10 Fusion chip,” which he described as “the most powerful chip on
 6 any smartphone while delivering the best battery life ever in an iPhone.”⁵ This press release did
 7 not differentiate between the iPhone 7 and iPhone 7 Plus other than to note that the iPhone 7 Plus
 8 had added camera features.

9 40. This Press Release highlighted that the iPhone 7 Devices had “**More**
 10 **Performance & Battery Life**,” including:

11 The new custom-designed Apple A10 Fusion chip features a new architecture that
 12 powers these innovations, making it the most powerful chip ever in a smartphone,
 13 while also getting more time between charges with the longest battery life ever in
 14 an iPhone. The A10 Fusion’s CPU now has four cores, seamlessly integrating two
 15 high-performance cores that run up to two times faster than iPhone 6, and two
 16 high-efficiency cores that are capable of running at just one-fifth the power of the
 high-performance cores. Graphics performance is also more powerful, running up
 to three times faster than iPhone 6 at as little as half the power, enabling a new
 level of gaming and professional apps.

17 41. Apple thus told customers that the iPhone 7 Devices were “the best, most
 18 advanced iPhone ever” for the reasons stated above. The Company did not disclose that
 19 subsequent iOS updates that Apple would make available for the iPhone 7 Devices would
 20 substantially degrade the performance of the devices.

21 **B. Apple’s False and Misleading Descriptions of iOS 15**

22 42. The iPhone 7 Devices use Apple’s iOS software. Apple regularly updates iOS.
 23 Apple generally releases a new numbered version of iOS every fall (often in September). It then
 24 releases second-level (*e.g.*, iOS 15.1) and third-level (*e.g.*, iOS 15.1.1.) interim updates for that
 25 iOS version.

27 ⁵ <https://www.apple.com/newsroom/2016/09/apple-introduces-iphone-7-iphone-7-plus/>.

43. iOS 10, which Apple released in September 2016, is the first iOS version that operated on the iPhone 7 Devices.

44. iOS 11 (released in September 2017), iOS 12 (released in September 2018), iOS 13 (released in September 2019), and iOS 14 (released in September 2020), all operated on the iPhone 7 Devices.

45. iOS 15, which Apple released on September 20, 2021, is the last iOS version that operates on the iPhone 7 Devices. The latest sub-version of iOS 15 is iOS 15.7.8, which Apple released on July 24, 2023.

46. iOS 15 has the following sub-versions, from the initial release of iOS 15.0 through iOS 15.7.8:⁶

iOS 15	iOS 15.0.1	iOS 15.0.2	iOS 15.1	iOS 15.1.1
iOS 15.2	iOS 15.2.1	iOS 15.3	iOS 15.3.1	iOS 15.4
iOS 15.4.1	iOS 15.5	iOS 15.6	iOS 15.6.1	iOS 15.7
iOS 15.7.1	iOS 15.7.2	iOS 15.7.3	iOS 15.7.4	iOS 15.7.5
iOS 15.7.6	iOS 15.7.7	iOS 15.7.8		

⁶ <https://support.apple.com/en-us/HT212788> (last accessed on August 2, 2023). The Term “iOS 15,” as used in this Complaint, refers to any or all sub-versions of iOS 15.

1 47. Apple strongly encourages iPhone owners to update their devices with the latest
2 iOS update. The Company does this through the language it uses to describe the update and
3 through its constant notifications that it sends to consumers' iPhones that the update is available
4 to download.

5 48. Apple puts a substantial amount of effort and resources into marketing the release
6 of each major iOS version and urging its customers to download the software update. This
7 includes Apple's annual Worldwide Developer Conference, where it unveils its new iOS version
8 several months before the version is released.

9 49. Apple did this for iOS 15 at the 2021 Worldwide Developer Conference. Tim
10 Cook, Apple's CEO, opened the conference. Craig Federighi, Apple's SVP, Software
11 Engineering, then introduced iOS 15. He stated that "for many of us, our iPhone has become
12 indispensable. And at the heart of iPhone, is iOS. iOS powers experiences we've come to rely
13 on. This year, we were inspired to create even more meaningful ways iPhone could help you.
14 Our new release is iOS 15. It's packed with features to make the iOS experience adapt to, and
15 complement, the way you use iPhone." Federighi then concluded his presentation of iOS 15 by
16 stating, "So that's iOS 15, with powerful new features that enhance how you use iPhone."⁷

17 50. The Company also promoted iOS 15 as "compatible" with the iPhone 7 Devices,
18 so that its customers could continue to use those prior devices while receiving the purported
19 performance and security benefits of this new software update. (*See supra* ¶¶ 33-35).

20 51. In addition, Apple promoted iOS 15 by describing in detail how it would improve
21 the iPhone experience. In Apple's description of each version of iOS 15 that the Company
22 includes on its website and that it sends to customers' devices in connection with the notification
23 providing the update, Apple describes many ways in which iOS 15 purportedly improves the
24 iPhone devices for which it is available, including the iPhone 7 Devices.

25
26
27 ⁷ <https://developer.apple.com/videos/play/wwdc2021/101/>.

52. For the initial version of iOS 15, Apple listed many items, across a wide variety of functions— including FaceTime, Messages and Memoji, Focus, Notifications, Maps, Safari, Wallet, Live Text, Spotlight, Photos, Health, Weather, Siri, Privacy, iCloud+, and Accessibility—that it described as “**features and improvements.**” (Emphasis added.) Apple then noted that “[t]his release includes even more features and improvements” and directs customers to visit a website for further information. In addition, the 87 specific “features and improvements” that Apple listed uniformly portrayed iOS 15 as improving the performance of iPhones that are compatible with the operating system, including the iPhone 7 Devices.

53. Apple also listed ways in which each subsequent version of iOS 15 would purportedly improve the iPhone. For many subsequent iOS 15 releases, including those in which Apple did not have specific features to highlight (including iOS 15.3, iOS 15.4.1, iOS 15.6.1, iOS 15.7, iOS 15.7.1, iOS 15.7.2, iOS 15.7.3, iOS 15.7.4, iOS 15.7.5, iOS 15.7.6, iOS 15.7.7, and iOS 15.7.8), it stated that the update had “security updates” or “fixes” and was “*recommended for all users.*” (Emphasis added).

54. In addition to promoting the performance benefits and new features of iOS updates, Apple’s description of iOS 15 (which Apple included on its website and sent in connection with the notification to users to update their devices) highlighted the need to update to iOS 15 for security purposes. For example, Apple stated that many versions of iOS 15 contained “important security updates” or “fixes,” and provided a link to “information on the security content” of nearly all versions of iOS 15. At that link, on a page titled “Apple security updates,” Apple tells customers: “**Get the latest software updates from Apple[.]** Keeping your software up to date is one of the most important things you can do to maintain your Apple product’s security.” Apple also notes on this page “that after a software update is installed for iOS, iPadOS, tvOS, and watchOS, *it cannot be downgraded to the previous version.*” (Emphasis added).⁸

⁸ <https://support.apple.com/en-us/HT201222>.

1 55. Moreover, Apple's descriptions of each version of iOS 15 built on its
2 representations about the previous versions, communicating to its customers that each version
3 improved the performance of prior versions. All of these statements by Apple promoting iOS 15
4 highlighted its purported positive features and encouraged iPhone users, including owners of the
5 iPhone 7 Devices, to download iOS 15. None of these statements that Apple made promoting
6 iOS 15 stated in any way that the update would make iPhone 7 Devices perform worse than they
7 did on any prior version of iOS.

8 56. Apple also encouraged owners of iPhone 7 Devices to update to iOS 15 by sending
9 notifications directly to their devices informing them of the update, including or making available
10 the information noted in Paragraphs 51-54 above, and providing a link through which they could
11 download the update. If customers chose not to update immediately, Apple would make
12 reminders repeatedly appear on customers' devices prompting them to download iOS 15 and
13 would have an icon in the Settings section of their devices showing that an update was available,
14 until they updated their devices.

15 57. Apple's fervent promotion and encouragement of customers to download iOS 15,
16 and its warnings that the new version of iOS provided important security updates, did not provide
17 customers with any meaningful choice. Customers could either download iOS 15, which Apple
18 claimed would improve their devices and make them more secure, or believe that they were
19 risking security breaches and be subject to Apple's incessant reminders if they refrained from
20 downloading the update.

21 **C. iOS 15 Degraded the Performance of the iPhone 7 Devices**

22 58. iOS 15 substantially degraded the performance of the iPhone 7 Devices in
23 comparison to all prior iOS versions that were available for the devices.

24 59. Each of the Plaintiffs experienced their iPhone 7 Devices performing more slowly
25 lagging, and glitching, or not working at all, when performing basic functions on their devices.

26 60. These experiences are all manifestations of a more fundamental underlying
27 problem with the operation of iOS 15 on the iPhone 7 Devices.

1 61. Furthermore, Plaintiffs have overseen testing that compared the performance of a
2 representative version of iOS 14 (iOS 14.7) to a representative version of iOS 15 (iOS 15.7.1) on
3 the iPhone 7 across several commonly used apps that Apple includes on iOS. This testing was
4 conducted on these versions because these were the versions of iOS 14 and iOS 15 available at
5 the time of the testing.

6 62. This testing showed substantial slowdowns in the performance of basic operations
7 on iOS 15 as compared to iOS 14.

8 63. For example, the Safari app showed slowdowns ranging from 114% to 29% in the
9 time it to launch the app, open a tab, delete a tab, select a tab, and share a webpage. Each of
10 these operations took more than 200 milliseconds longer, on average, on iOS 15 than iOS 14.

11 64. Similarly, the Camera app showed a slowdown of 47%, also over 200
12 milliseconds slower, to operate the Camera roll.

13 65. This testing did not show any speedups that were comparable to these slowdowns.
14 No speedup was over 5% (or 42 milliseconds).

15 66. These results are consistent with how users have described the experience of
16 operating iOS 15 on the iPhone 7 Devices. Users of the iPhone 7 Devices have experienced
17 significant problems with operating their devices on iOS 15 in the many ways in which
18 consumers use their devices in the real world, as described by Plaintiffs above. This testing shows
19 that that the slowdown that Plaintiffs have experienced also occurs in the more controlled testing
20 environment.

21 67. For example, each test was run five times, compared the same starting and
22 stopping point for each operation in both iOS 14 and iOS 15, and was conducted on Wifi and
23 with the devices plugged in, to control for external variables. In addition, The tests were run with
24 a warm launch, which means launching an app after it has already been launched previously.
25 Apps should launch more quickly with a warm launch than a cold launch. This is therefore a
26 conservative testing condition that should reduce the size of any slowdown as compared to a cold
27 launch.

68. The problems with iOS 15 have also been documented elsewhere. iOS 15 was first released on September 20, 2021 and was plagued by problems since that time. A *Forbes* article dated September 29, 2021, stated that after a seemingly stable initial launch, “as millions of iPhone owners begin to upgrade, serious problems are now being found in almost all parts of the release.”⁹ Problems that were initially reported by *AppleInsider* for the iPhone 13 (the newest iPhone at the time), “including camera bugs, failure to wake, unresponsive screens, problems with core apps and borked accessories,” were “just the tip of the iceberg as now iPhone[s] of all ages are being dragged into this dumpster fire.” The specific “serious problems” listed include:

- Apple Pay unavailable
- iPhone 13 camera problems and cameras on older models as well
- CarPlay is significantly impacted for many
- Touchscreen issues have been introduced
- iMessage is broken or glitching
- Apple Music has playback and storage problems
- Notes data is being lost
- There are a growing number of reports about overheating
- Apple Podcasts queues are broken
- Storage management has a widespread reporting error
- General issues with iOS 15 stability
- Confusing false upgrade alerts
- Widget bugs

⁹ <https://www.forbes.com/sites/gordonkelly/2021/09/29/apple-iphone-warning-ios-15-update-problems-bugs-upgrade-13-pro-max-/?sh=1c528d4c6116>.

69. Some users experienced all of these problems at once. The article explained that “[t]he breadth of flaws and bugs here has not been seen since iOS 13’s famously rocky launch and is surprising given initial reports were of a relatively stable release. . . . If you haven’t upgraded to iOS 15 yet, I would hold fire.”

70. These problems persisted, at least on the iPhone 7 Devices, as Apple released subsequent versions of iOS 15.

71. For example, a *GottaBeMobile* article published on March 31, 2023—when iOS 15.7.4 was the most current version—titled “How to Fix iOS 15 Performance Problems,” explains that “[a]s we push away from the latest iOS 15 firmware release we’re hearing about a variety of performance issues plaguing iPhone users.”¹⁰ The article notes that “[t]he current list of iOS 15 performance issues includes UI [user interface] lag, freezes, lock ups, and random reboots.” It emphasized that “[t]hese are extremely common, particularly on aging iPhone models.” (Emphasis added).

D. The Reason Why iOS 15’s Performance is Degraded on the iPhone 7 Devices

72. The iPhone 7 Devices were first released on September 16, 2016. Between the release of the iPhone 7 Devices and iOS 15 five years later, Apple released multiple new iPhone models (including the iPhone 8 series, iPhone X, iPhone XR, iPhone XS series, iPhone 11 series, iPhone SE (2nd), iPhone 12 series, and iPhone 13 series). Apple typically includes more powerful processors and other advances in its newer-model iPhones. It then makes its new iOS versions, which Apple generally releases each September, more sophisticated and complex, tailored to the capabilities of the more-powerful processors in the latest model iPhone.

73. Indeed, “[e]very year, Apple’s newest iPhone models are claimed to be the fastest it has ever made. With the constant development of Apple’s A-series system-on-chip (SoC) to

¹⁰ <https://www.gottabemobile.com/how-to-fix-ios-15-performance-problems/>. *GottaBeMobile* covers the mobile technology sector. This article also explained that users are not able to fix all performance problems on their own and these issues “may require a fix from Apple.”

pack more onto the component, this is quite a reliable claim that Apple can lean on.”¹¹

74. The following chart shows this development from the iPhone 8 through 14:

Specifications

Specifications	Name	Memory (GB)	Performance Cores	Efficiency Cores	Transistors (Billion)	GPU Cores	Neural Engine Cores
iPhone 14 Pro	A16 Bionic	6	2	4	16	5	16
iPhone 14	A15 Bionic	6	2	4	15	5	16
iPhone 13 Pro	A15 Bionic	6	2	4	15	5	16
iPhone 13	A15 Bionic	4	2	4	15	4	16
iPhone 12 Pro	A14 Bionic	6	2	4	11.8	4	16
iPhone 12	A14 Bionic	4	2	4	11.8	4	16
iPhone 11 Pro	A13 Bionic	4	2	4	8.5	4	8
iPhone 11	A13 Bionic	4	2	4	8.5	4	8
iPhone XS	A12 Bionic	3	2	4	6.9	4	8
iPhone XR	A12 Bionic	3	2	4	6.9	4	8
iPhone X	A11 Bionic	3	2	4	4.3	3	2
iPhone 8	A11 Bionic	2	2	4	4.3	3	2

¹¹ <https://appleinsider.com/articles/22/09/26/how-iphone-speeds-have-grown-in-the-last-5-years>.

1 75. The iPhone 7 Devices were even farther behind because they have only the A10
2 Fusion chip. In addition to Apple’s ordinary annual improvement in its iPhone processing chips,
3 the jump from the A10 Fusion chip in the iPhone 7 Devices to the A11 Bionic chip in the iPhone
4 8 was even more significant. Whereas the A10 Fusion chip has four processor cores, the A11
5 Bionic chip has six processor cores. This allows “apps and background tasks [to] be intelligently
6 scheduled onto the appropriate cores so that power efficiency is maximized” on the A11 Bionic
7 chip.¹²

8 76. The A11 Bionic chip that was introduced in the iPhone 8 also had other
9 improvements. For example, “the A11 Bionic includes a custom-designed graphics processor
10 that delivers a 30% performance bump from the Imagination-based processor in the A10 Fusion.”
11 And the A11 Bionic chip had the Apple Neural Engine “integrated directly onto” the chip,
12 providing for the processing of 600 billion operations per second for tasks that were previously
13 “handled by the CPU.”¹³

14 77. Furthermore, the processing power of iPhone chips has developed even further
15 since Apple first introduced the A11 Bionic chip in 2017. When iOS 15 was released in 2021,
16 Apple was up to the A15 Bionic chip in the iPhone 13 series. The iPhone 13 also has significantly
17 more memory than the iPhone 7 Devices.

18 78. These developments make the iPhone 13, which was the newest iPhone model
19 when iOS 15 was released, substantially faster and more powerful than the iPhone 7 Devices.¹⁴
20 iOS 15 was released to the public concurrently with the iPhone 13, in September 2021. The
21 much-less-advanced iPhone 7 Devices are simply not able to run iOS 15 as well and suffer
22 performance degradations in basic operations as compared to prior iOS versions that were not as
23

24 ¹² The Motley Fool, “3 Things You Need to Know About Apple’s A11 Bionic Chip” (Sept. 13,
25 2017).

26 ¹³ *Id.*

27 ¹⁴ See [https://appleinsider.com/articles/22/09/26/how-iphone-speeds-have-grown-in-the-last-5-](https://appleinsider.com/articles/22/09/26/how-iphone-speeds-have-grown-in-the-last-5-years)
28 years.

1 advanced. But while Apple promotes its newer devices as better and faster than its older ones, it
 2 does not tell consumers that iOS updates (such as iOS 15) will cause older devices (such as the
 3 iPhone 7 Devices) to suffer performance degradations *in comparison to how those same devices*
 4 *performed on prior iOS versions.*

5 79. The constant advances in the capabilities and complexity of Apple’s new iPhone
 6 models and iOS versions that it releases each fall are a core part of its business model. Apple
 7 heavily promotes these advances in well-publicized media events and advertisements. The
 8 Company’s annual Worldwide Developer Conference, at which it unveils its new iPhone and
 9 iOS version, has become a spectacle that is covered by major media outlets. For example, the
 10 *Wall Street Journal* covered the 2021 Worldwide Developer Conference, where Apple unveiled
 11 iOS 15.¹⁵

12 80. These developments induce customers to continue to purchase newer devices.
 13 Apple’s ability to earn the magnitude of revenue and profits that it does is therefore tightly tied
 14 to its continual release of more sophisticated and complex products. The problem, however, is
 15 that Apple has not acknowledged—and is not willing to admit—that this approach, by its nature,
 16 does a disservice to its customers that want to continue to use their older devices. Apple tries to
 17 have it both ways by representing that these customers can continue updating their devices to the
 18 latest operating system without suffering the performance degradation that goes with those
 19 updates. (*See supra* ¶¶ 33-35, 47-57).

20 81. As the popular YouTube series *Apple Explained* has described, “[i]f you’ve
 21 updated your iPhone to a new version of iOS and felt like it became slower, you’re not alone.”¹⁶
 22 This video explains that the “[t]he problem has to do with how rechargeable batteries age, and
 23

24
 25 ¹⁵ “Apple’s Tim Cook Kicks Off WWDC by Doubling Down on Privacy,” *Wall Street Journal*
 26 (June 7, 2021), <https://www.wsj.com/articles/apples-annual-developer-conference-caps-a-tense-year-11623058201>.

27 ¹⁶ [Why iPhones Slow Down After A Software Update - YouTube](https://www.youtube.com/watch?v=VuPcs9Tcdk)
 28 (<https://www.youtube.com/watch?v=VuPcs9Tcdk>).

1 the power demands that a new operating system places on those devices.” Because of these
2 issues, owners of older iPhone models may have “began noticing glitching and lagging after the
3 update to iOS 15.” As this video states, the source of the problem is not software “bugs”: “the
4 reason your older iPhone is struggling isn’t due to faulty lines of code, but rather, a more
5 power-hungry operating system that demands more performance from the devices they run on.
6 And if your device is a few years old, this can cause some problems.”

7 82. This *Apple Explained* video explains that the problems are caused in part by the
8 lower capabilities of lithium ion batteries as they age, particularly as they fall below 80%
9 capacity, which makes them unable to provide enough power to the processor, “causing lag,
10 glitches, and even app crashes.” But the video emphasizes that “*this issue is magnified when*
11 *updating that older iPhone to a newer, more powerful operating system*. Since Apple adds new
12 features that are designed for the latest iPhone’s processing power, if you don’t have the latest
13 iPhone, and your existing battery has already degraded close to 80%, that new operating system
14 is going to put it under even more stress, making your device slow down even more.” (Emphasis
15 added).

16 83. The poorer performance of iOS 15 on the iPhone 7 Devices is thus a result of both
17 (1) the lower technological capabilities of the older devices and (2) poorer battery health. Merely
18 replacing the battery does not solve the first problem. Even if the battery is replaced, there still
19 remains the inherent problem that the iPhone 7 Devices have interacting with the newer iOS
20 version. Apple did not explain to its customers the problems that the iPhone 7 Devices have
21 operating iOS 15.

22 84. Furthermore, iOS 15 makes battery performance even worse on the iPhone 7
23 Devices because, as Plaintiffs describe, their batteries drained more quickly after they
24 downloaded iOS 15. This makes sense given the greater power demands that iOS 15 places on
25 their devices.

26 85. In addition, Apple did not tell customers when they purchased their iPhone 7
27 Devices that its battery degradation would be exacerbated by subsequent iOS versions such as
28

iOS 15, yet Apple charges approximately \$69 to replace the battery of iPhone 7 Devices. Apple should compensate all owners and users of iPhone 7 Devices for the amounts spent on replacing the batteries of their devices after downloading iOS 15 and provide battery replacements free of charge.

86. In fact, Apple recently reached a large settlement in a class action arising out of the Company's admission that it purposely slowed down older versions of iOS to prevent excessive power demands on older batteries.¹⁷ That case, however, dealt with prior iOS versions that were run before December 21, 2017, long before Apple released iOS 15 in September 2021. Additionally, Apple has never admitted that performance degradation is exacerbated by the inability of older model iPhones to operate newer, more complex and demanding iOS versions. This problem was particularly acute given the vast gulf between iOS 15 and the capabilities of the iPhone 7 Devices, as described above.

87. Apple is well aware of these issues, as would be expected from one of the largest and most sophisticated technology companies in the world. That is why when the Company released iOS 16 in September 2022, it took the novel approach of providing new versions of iOS 15 for the iPhone 7 Devices instead of making iOS 16 available for these devices. Apple released iOS 15.7 in September 2022, alongside iOS 16 for newer devices. It then continued to release new versions of iOS 15 for the iPhone 7 Devices, with iOS 15.7.8 released on July 24, 2023. It has been reported that "[t]he release of iOS 15.7 serves two purposes: to keep older iPhones that can't run iOS 16 [such as the iPhone 7 Devices] updated with security patches (this includes the iPhone 6S and iPhone 7 series along with the original iPhone SE, among others) and to give people who don't want to upgrade to iOS 16 a way to get security updates."¹⁸ Apple thus appears

¹⁷ Jonathan Stempel, "Apple to pay up to \$500 million to settle U.S. lawsuit over slow iPhones," *Reuters* (Mar. 2, 2020), <https://www.reuters.com/article/us-apple-iphones-settlement/apple-to-pay-up-to-500-million-to-settle-u-s-lawsuit-over-slow-iphones-idUSKBN20P2E7>.

¹⁸ "Apple releases iOS 15.7 for old devices and people who don't want iOS 16 yet," *Ars Technica*, (September 12, 2022), <https://arstechnica.com/gadgets/2022/09/apple-sends-out-ios-15-7-macos-12-6-with-security-updates-as-it-releases-ios-16/>.

1 to have belatedly tried to address the problem of how the iPhone 7 Devices interact with newer
2 iOS versions. But it has never admitted that this is the reason for its actions. These steps also do
3 not fix the performance degradation that already took place from updating iPhone 7 Devices to
4 iOS 15; they just prevent even further degradation in iOS 16.

5 88. Apple should have taken this approach much sooner, releasing security-only
6 updates of iOS 14 or earlier for the iPhone 7 Devices and explaining the reason why, rather than
7 making iOS 15 available for these devices.

8 89. Moreover, the fact that Apple has made new versions of iOS 15 available
9 alongside iOS 16 for iPhone models that are newer than the iPhone 7 shows that Apple has tacitly
10 acknowledged that newer iOS versions will not perform well on older devices. But Apple still
11 has not admitted that this is the reason for these actions, and they do not apply to the iPhone 7
12 Devices.

13 90. Apple's misrepresentation and concealment of the true effects of iOS 15 on the
14 iPhone 7 Devices provide it enormous additional profit. When older devices suffer performance
15 degradation, customers turn to purchasing newer devices. Regardless of whether Apple has the
16 nefarious intent of purposely slowing down older devices in order to sell more iPhones or is
17 simply aware that this will happen as a result of its actions, the undeniable conclusion is that
18 Apple releases new iOS versions that it knows will cause performance degradations on older
19 iPhones and result in immense added profit for the Company.

20 91. iOS 15 has caused Plaintiffs significant harm, including monetary and
21 non-monetary damages, by damaging the functionality of their iPhone 7 Devices. This harm
22 includes the decline in value of their devices as a result of iOS 15 being downloaded onto them,
23 increased time and expense in dealing with device performance issues, the cost of replacing the
24 battery in their devices, and not receiving the benefit of the bargain when purchasing their iPhone
25 7 Devices.

V. CLASS ACTION ALLEGATIONS

92. Plaintiffs seek certification of the following class, pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), as applicable, and (c)(4):

All purchasers, owners, users, or lessees of any iPhone 7 Device in the United States that was updated to any version of iOS 15.

93. In addition (or, in the case of the California Subclass, in the alternative), Plaintiffs seek certification of the following subclasses:

California Subclass: All purchasers, owners, users, or lessees of any iPhone 7 Device in California that was updated to any version of iOS 15.

New York Subclass: All purchasers, owners, users, or lessees of any iPhone 7 Device in New York that was updated to any version of iOS 15.

Louisiana Subclass: All purchasers, owners, users, or lessees of any iPhone 7 Device in Louisiana that was updated to any version of iOS 15.

North Carolina Subclass: All purchasers, owners, users, or lessees of any iPhone 7 Device in North Carolina that was updated to any version of iOS 15.

Virginia Subclass: All purchasers, owners, users, or lessees of any iPhone 7 Device in Virginia that was updated to any version of iOS 15.

94. The classes and subclasses defined above are collectively referred to herein as the “Class,” unless specifically stated otherwise.

95. Excluded from the Class are Apple, its subsidiaries, affiliates, officers, directors, and employees.

96. **Numerosity** under Fed. R. Civ. P. 23(a)(1): The members of each class are so numerous and geographically dispersed that individual joinder of all class members is impracticable. Plaintiffs are informed and believe—based upon the publicly-available information discussed herein—that there are hundreds of thousands or millions of class members, making joinder impracticable. Those individuals’ identities are available through Apple’s records, and class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods.

1 97. **Commonality and Predominance** under Fed. R. Civ. P. 23(a)(2) and (b)(3),
 2 respectively: Apple has acted with respect to Plaintiffs and the other members of the Class in a
 3 manner generally applicable to each of them. There is a well-defined community of interest in
 4 the questions of law and fact involved, which affect all Class Members. The questions of law and
 5 fact common to the Class predominate over the questions that may affect individual class
 6 members, including the following:

- 7 a. Whether iOS 15 damaged the performance of the iPhone 7 Devices;
- 8 b. Whether Apple misrepresented or omitted the effect of iOS 15 of the iPhone 7
 9 Devices;
- 10 c. Whether Apple knew that iOS 15 would damage the performance of the iPhone
 11 7 Devices;
- 12 d. Whether Apple's uniform conduct violated each of the causes of action set forth
 13 below, including the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, et seq.;
 14 California Computer Data Access and Fraud Act, Cal. Penal Code § 502, et seq.;
 15 California False and Misleading Advertising Law, Cal. Bus. & Prof. Code, §
 16 17500 et seq.; trespass to chattels; Unfair Competition Law ("UCL"), Cal. Bus.
 17 & Prof. Code §§ 17200, et seq.; Louisiana Unfair Trade Practices and Consumer
 18 Protection Law, La. Rev. Stat. Ann. §§ 51:1401, et seq.; New York General
 19 Business Law, §§ 349, 350, et seq.; North Carolina Unfair Trade Practices Act,
 20 N.C. Gen. Stat. Ann. §§ 75-1.1, et seq.; and Virginia Consumer Protection Act,
 21 Va. Code Ann. §§ 59.1-196, et seq.;
- 22 e. Whether compensatory, trebled, consequential, or statutory damages, restitution,
 23 or attorneys' fees should be awarded to Plaintiffs and the other Class members,
 24 where permissible by statute;
- 25 f. Whether injunctive and/or other equitable relief is appropriate, and what that
 26 relief should be.

1 98. **Typicality** under Fed. R. Civ. P. 23(a)(3): Plaintiffs' claims are typical of other
 2 Class members' claims because Plaintiffs and class members were subjected to the same
 3 allegedly unlawful conduct and damaged in the same way.

4 99. **Adequacy of Representation** under Fed. R. Civ. P. 23(a)(4): Plaintiffs will fairly
 5 and adequately protect the interests of the Class. Plaintiffs are adequate class representatives
 6 because their interests do not conflict with the interests of class members who they seek to
 7 represent, Plaintiffs have retained counsel competent and experienced in complex class action
 8 litigation, and Plaintiffs intend to prosecute this action vigorously. The Class members' interests
 9 will be fairly and adequately protected by Plaintiffs and their counsel.

10 100. **Declaratory and Injunctive Relief** under Fed. R. Civ. P. 23(b)(2): The
 11 prosecution of separate actions by individual Class Members would create a risk of inconsistent
 12 or varying adjudications with respect to individual Class Members that would establish
 13 incompatible standards of conduct for Apple. Such individual actions would create a risk of
 14 adjudications that would be dispositive of the interests of other Class Members and impair their
 15 interests. Apple has acted and/or refused to act on grounds generally applicable to the Class,
 16 making final injunctive relief or corresponding declaratory relief appropriate.

17 101. Injunctive relief is particularly necessary in this case because Plaintiffs and other
 18 Class Members continue to own their iPhone 7 Devices and Apple will continue to offer updates,
 19 as it has done regularly since the introduction of the first iPhone. These updates contain important
 20 security fixes, and owners of the iPhone 7 Devices should be able to plug security holes in the
 21 iPhone 7 Devices without also damaging the performance the devices. Apple should be enjoined
 22 from continuing the *status quo*, which currently is to convince iPhone users to update their
 23 devices by disclosing only the benefits of the updates. At the very least, iPhone users should be
 24 told whether an update will impact the performance of their devices so that they can make an
 25 informed decision.

26 102. **Superiority** under Fed. R. Civ. P. 23(b)(3): A class action is superior to any other
 27 available means for the fair and efficient adjudication of this controversy, and no unusual
 28

difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and Class Members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Apple, so it would be impracticable for Class Members to individually seek redress for Apple's wrongful conduct. Even if Class Members could afford litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

VI. CAUSES OF ACTION

103. Plaintiffs bring the following causes of action. In addition to Apple's violation of federal law described in Count I, Counts II through V brought under California law apply to the entire Class because Apple's conduct, as described herein, originated from California, the iPhone 7 Devices and iOS 15 were designed and originated in California, and Apple's uniform iOS Software License Agreement provides that California law shall apply. In the alternative, Counts II through V are brought by the California Plaintiffs on behalf of the California Subclass and Count IV is additionally brought by the New York Plaintiffs on behalf of the New York Subclass, the Louisiana Plaintiff on behalf of the Louisiana Subclass, the North Carolina Plaintiff on behalf of the North Carolina Subclass, and the Virginia Plaintiff on behalf of the Virginia Subclass.

COUNT I

VIOLATIONS OF THE COMPUTER FRAUD AND ABUSE ACT 18 U.S.C. § 1030, et seq.

104. Plaintiffs reallege and incorporate by reference each of the above paragraphs as if fully set forth herein.

105. Apple caused Plaintiffs and class members to download and install iOS 15 to their iPhone 7 Devices without informing them that iOS 15 would diminish the performance of their iPhone 7 Devices. Accordingly, Plaintiffs and class members did not give permission for Apple

1 to damage and/or disrupt their iPhone 7 Devices via iOS 15—nor could they—as Apple omitted
2 material information to Plaintiffs and class members regarding iOS 15.

3 106. Plaintiffs and class members' iPhone 7 Devices are protected computers as
4 defined in 18 U.S.C. § 1030(e)(2)(B) because they are used in interstate commerce and/or are
5 communication devices. Apple violated 18 U.S.C. § 1030(a)(5)(A) because it knowingly caused
6 the transmission of a program, information, code, or command by sending iOS updates, and, as
7 a result of Apple's knowing transmission, Apple intentionally caused damages without
8 authorization to Plaintiffs' iPhone 7 Devices. Apple programmers wrote every aspect of the
9 update program(s). Apple extensively tests each of its updates prior to releasing it to the public,
10 and Apple knows that software updates can significantly degrade the performance of its devices
11 and, for that reason, tests extensively all updates to measure the impact they have on device
12 performance. Apple knew the damage that iOS 15 would have on the performance of the iPhone
13 7 Devices and that iOS 15 would have those damaging effects. As alleged above, Plaintiffs and
14 class members did not know that iOS 15 would damage their iPhone 7 Devices and, therefore,
15 did not authorize such damage.

16 107. Apple's conduct has caused Plaintiffs and class members economic damages. An
17 iPhone whose performance has been degraded is worth less than prior to the degradation. Indeed,
18 part of what consumers pay for when purchasing iPhone 7 Device is the expectation that it will
19 continue to perform at least at the same level. That aspect of the iPhone 7 Devices was
20 significantly harmed by the performance degradation that iOS 15 caused.

21 108. Class members, including Plaintiffs, have additionally suffered the impaired use
22 of their iPhone 7 Devices. Immediately after installing iOS 15, their iPhone 7 Devices became
23 slower and performed worse, and they should be compensated for such reduction in function.

24 109. Moreover, there is a healthy and active market for used iPhones, and many
25 retailers, including Apple itself, allow iPhone owners to trade in their devices for a reduction in
26 price of a new device. Plaintiffs and class members have additionally suffered loss by reasons of
27 these violations.

111. Plaintiffs and class members suffered damages as a result of Apple's actions,
including as described in Paragraphs 91 and 107-10. Plaintiffs seek all damages available as a
result of Apple's violation of the Consumer Fraud and Abuse Act.

VIOLATIONS OF THE CALIFORNIA COMPUTER DATA

112. Plaintiffs reallege and incorporate by reference each of the above paragraphs as if
fully set forth herein.

113. In pushing iOS 15 to unsuspecting users of iPhone 7 Devices, Apple violated the California Penal Code, Computer Data Access and Fraud Act, Cal. Penal Code § 502, et seq. (“CDAFA”).

114. Apple specifically violated § 502 (c)(4) and (c)(5).

115. As to § 502(c)(4), Apple knowingly accessed a computer system (the iPhone 7 Devices) by providing and installing iOS 15, which damaged the iPhone 7 Devices. Apple did not inform Plaintiffs or the class members that installation of iOS 15 would degrade the performance of their iPhone 7 Devices, and, therefore, Plaintiffs and other class members did not consent to the damages.

116. As to § 502(c)(5), Apple knowingly and without consent disrupted computer services by installing software updates (iOS 15) to their iPhone 7 Devices, which, as alleged above, degraded the performance of the devices. “Computer services” is defined by Cal. Penal Code § 502(b)(4) as “computer time, data processing, or storage functions, Internet services,

1 electronic mail services, electronic message services, or other uses of a computer, computer
 2 system, or computer network.” The iPhone 7 Devices are and/or provide computer services
 3 within the meaning of the statute.

4 117. Because class members did not know that the updates would degrade the
 5 performance of their devices, they did not give Apple permission to access, damage, and/or
 6 disrupt their iPhone 7 Devices.

7 118. Plaintiffs and class members suffered damages as a result of Apple’s actions,
 8 including as described in Paragraphs 91 and 107-10 above. Plaintiffs seek all damages available
 9 as a result of Apple’s unlawful conduct.

10 **COUNT III**

11 **VIOLATIONS OF CALIFORNIA’S FALSE AND**

12 **MISLEADING ADVERTISING LAW**

13 **Cal. Bus. & Prof. Code, § 17500 et seq.**

14 119. Plaintiffs reallege and incorporate by reference each of the above paragraphs as if
 15 fully set forth herein.

16 120. Apple’s acts and practices, as described herein, have deceived and/or are likely to
 17 continue to deceive class members and the public. Apple misrepresented the performance iOS 15
 18 on the iPhone 7 Devices, concealed the performance degradation of the iPhone 7 Devices caused
 19 by iOS 15, and misrepresented the purpose of iOS 15.

20 121. By its actions, Apple disseminated uniform advertising regarding iOS 15 based
 21 out of California, and governed by California law. The advertising was, by its very nature, unfair,
 22 deceptive, untrue, and misleading within the meaning of Cal. Bus. & Prof. Code § 17500, et seq.
 23 Such advertisements were intended to and likely did deceive the consuming public for the reasons
 24 detailed herein.

25 122. The above-described false, misleading, and deceptive advertising Apple
 26 disseminated continues to have a likelihood to deceive in that Apple failed to disclose the true
 27 nature of iOS 15 and its impact on the iOS 7 Devices, continuing to deceive consumers.

1 123. Apple continued to misrepresent to consumers that iOS 15 improved or
2 maintained the performance of the iPhone 7 Devices even though it actually degraded the
3 performance of the devices. Had Apple disclosed those issues, rather than falsely advertising iOS
4 15, consumers would have not downloaded iOS 15 onto their devices. In addition, had Apple
5 disclosed the way in which increasingly complex iOS updates interact with older devices,
6 consumers would not have purchased their iPhone 7 Devices for the price that Apple charged.

7 124. In making and disseminating the statements alleged herein, Apple knew, or should
8 have known, its advertisements were untrue and misleading in violation of California law.
9 Plaintiffs and other class members based their decisions to download iOS 15 on Apple's omitted
10 material facts. Plaintiffs and class members were injured in fact and lost money and property as
11 a result.

12 125. The misrepresentations and non-disclosures by Apple of the material facts
13 described and detailed herein constitute false and misleading advertising and, therefore,
14 constitute violations of Cal. Bus. & Prof. Code § 17500, et seq.

15 126. As a result of Apple's wrongful conduct, Plaintiffs and the class members lost
16 money. Plaintiffs and the class members are therefore entitled to restitution as appropriate for
17 this cause of action.

18 127. Plaintiffs also seek all damages available as a result of Apple's false and
19 misleading advertising. Plaintiffs and class members suffered damages as a result of Apple's
20 actions, including as described in Paragraphs 91 and 107-10 above.

21 **COUNT IV**

22 **TRESPASS TO CHATTELS**

23 128. Plaintiffs reallege and incorporate by reference each of the above paragraphs as if
24 fully set forth herein.

25 129. California common law prohibits the intentional intermeddling with personal
26 property in the possession of another, without consent, that results in either a) the deprivation of
27
28

1 the use of that personal property; or b) the impairment of the condition, quality, or usefulness of
 2 the property.

3 130. Apple impaired the condition, quality, and usefulness of Plaintiffs' and class
 4 members' iPhone 7 Devices, or parts of them, without their knowledge or consent. Such acts
 5 constituted an intentional interference with the use and enjoyment of the iPhone 7 Devices.

6 131. Apple acted intentionally, because it knew that Plaintiffs and class members were
 7 downloading computer software onto their iPhone 7 Devices that reduced the performance of the
 8 devices. Plaintiffs and other class members only consented to the installation of iOS 15 because
 9 it would improve or maintain performance, not diminish performance.

10 132. Apple engaged in deception to gain access to the iPhone 7 Devices and install new
 11 computer software in the form of iOS 15.

12 133. Plaintiffs and class members suffered damages as a result of Apple's actions,
 13 including as described in Paragraphs 91 and 107-10 above. Plaintiffs seek all damages available
 14 as a result of Apple's trespass.

15 **COUNT V**

16 **VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL")** 17 **Cal. Bus. & Prof. Code, § 17200 et seq.**

18 134. Plaintiffs reallege and incorporate by reference each of the above paragraphs as if
 19 fully set forth herein.

20 135. Apple is a "person" as defined by Cal. Bus. & Prof. Code § 17201.

21 136. Apple violated the UCL by engaging in unlawful, unfair, and deceptive business
 22 acts and practices.

23 137. Apple has engaged in "unlawful" business practices by violating multiple laws,
 24 including the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, et seq.; California Computer
 25 Access and Fraud Act, Cal. Penal Code § 502, et seq.; False and Misleading Advertising Law,
 26 Cal. Bus. & Prof. Code § 17500, et seq.; and trespass to chattels.

138. Apple violated § 17200's prohibition against "fraudulent" conduct by touting to consumers, including Plaintiffs, that iOS 15 would improve their devices without disclosing the critically important information that iOS 15 would degrade the performance of their devices. Apple's representations and omissions were likely to mislead reasonable consumers and did mislead them. Plaintiffs and other members of the Class relied on Apple's misrepresentations and would not have downloaded iOS 15 if they knew that such iOS updates would cause their iPhones to be damaged. As alleged above, among other economic damage, the iPhone 7 Devices are worth less now than before Apple tricked them into installing iOS 15.

139. Apple's conduct is also "unfair" pursuant to the UCL. Apple's conduct is substantially injurious to consumers like Plaintiffs and other Class members, offends public policy, is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct—damaging iPhone 7 Devices that are an important means of communications and a critical tool that Apple's customers rely on for basic daily needs—outweighs any alleged benefit. Specifically, the utility gained by updating the iOS software of the iPhone 7 Devices was outweighed by the diminishment of the functionality of the devices. Apple engaged in this conduct at the expense of its customers' rights when other, lawful alternatives were available—such as providing customers with full information about iOS 15, among other alternatives.

140. Plaintiffs and class members suffered damages as a result of Apple's actions, including as described in Paragraphs 91 and 107-10 above. Plaintiffs seek all damages available as a result of Apple's unfair, unlawful, and fraudulent business practices.

CLAIMS ON BEHALF OF THE NEW YORK SUBCLASS

COUNT VI
VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW
N.Y. GEN. BUS. LAW §§ 349, ET SEQ.

141. The New York Plaintiffs identified above ("Plaintiffs," for purposes of Counts VII and VIII), individually and on behalf of the New York Subclass, reallege and incorporate by reference each of the above paragraphs as if fully set forth herein.

1 142. Apple engaged in deceptive acts or practices in the conduct of its business, trade,
2 and commerce or furnishing of services, in violation of N.Y. Gen. Bus. Law § 349, as described
3 herein.

4 143. Apple's representations and omissions were material because they were likely to
5 deceive reasonable consumers.

6 144. As a direct and proximate result of Apple's deceptive and unlawful acts and
7 practices, Plaintiffs and New York Subclass members have suffered and will continue to suffer
8 injury, ascertainable losses of money or property, and monetary and non-monetary damages.

9 145. Apple acted intentionally, knowingly, and maliciously to violate New York's
10 General Business Law, and recklessly disregarded Plaintiffs and New York Subclass members'
11 rights. Apple's knowledge that iOS 15 would degrade the performance of the iPhone 7 Devices
12 put it on notice that the devices were not as it advertised.

13 146. Apple's deceptive and unlawful acts and practices complained of herein affected
14 the public interest and consumers at large, including the New York Subclass members.

15 147. The above deceptive and unlawful practices and acts by Apple caused substantial
16 injury to Plaintiffs and New York Subclass members that they could not reasonably avoid.

17 148. Plaintiffs and New York Subclass members suffered damages as a result of
18 Apple's actions, including as described in Paragraphs 91 and 107-10 above. Plaintiffs seek all
19 damages available as a result of Apple's violation of New York General Business Law § 349.

20 **COUNT VII**

21 **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW** 22 **N.Y. Gen. Bus. Law §§ 350, et seq.**

23 149. Plaintiffs reallege and incorporate by reference each of the above paragraphs as if
24 fully set forth herein, including, in particular, Paragraphs 140 to 147 as to Section 349 of the New
25 York General Business Law.

1 150. Additionally, Apple’s advertisements were false and misleading in a material
2 way, as described herein, via affirmative statements and omissions whereby Apple failed to
3 reveal facts material in light of such representations or conduct.

4 151. Plaintiffs and New York Subclass members suffered damages as a result of
5 Apple’s actions, including as described in Paragraphs 91 and 107-10 above. Plaintiffs seek all
6 damages available as a result of Apple’s violation of New York General Business Law § 350.

7 **CLAIMS ON BEHALF OF THE LOUISIANA SUBCLASS**

8 **COUNT VIII**

9 **LOUISIANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW**

10 **La. Rev. Stat. Ann. §§ 51:1401, et seq.**

11 152. The Louisiana Plaintiff identified above (“Plaintiff,” for purposes of this Count),
12 individually and on behalf of the Louisiana Subclass, realleges and incorporates by reference
13 each of the above paragraphs as if fully set forth herein.

14 153. Apple, Plaintiff, and the Louisiana Subclass members are “persons” within the
15 meaning of the La. Rev. Stat. Ann. § 51:1402(8).

16 154. Plaintiff and Louisiana Subclass members are “consumers” within the meaning of
17 La. Rev. Stat. Ann. § 51:1402(1).

18 155. Apple engaged in “trade” or “commerce” within the meaning of La. Rev. Stat.
19 Ann. § 51:1402(10).

20 156. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana
21 CPL”) makes unlawful “unfair or deceptive acts or practices in the conduct of any trade or
22 commerce.” La. Rev. Stat. Ann. § 51:1405(A). Unfair acts are those that offend established public
23 policy, while deceptive acts are practices that amount to fraud, deceit, or misrepresentation.

24 157. Apple’s representations and omissions were material because they were likely to
25 deceive reasonable consumers.

26 158. Apple intended to mislead Plaintiff and Louisiana Subclass members and induce
27 them to rely on its misrepresentations and omissions.
28

1 159. Apple's unfair and deceptive acts and practices were immoral, unethical,
 2 oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and Louisiana
 3 Subclass members that they could not reasonably avoid. This substantial injury outweighed any
 4 benefits to consumers or to competition.

5 160. Apple acted intentionally, knowingly, and maliciously to violate the Louisiana
 6 CPL, and recklessly disregarded Plaintiff and Louisiana Subclass members' rights. Apple's
 7 knowledge of the performance degradation on the iPhone 7 Devices caused by iOS 15 put it on
 8 notice that iOS 15 and the iPhone 7 Devices were not as Apple advertised.

9 161. Had Apple disclosed to Plaintiff and Louisiana Subclass members that it
 10 misrepresented the iPhone 7 Devices and iOS 15, omitted material information regarding the
 11 performance degradation of the iPhone Devices caused by iOS 15, omitted material information
 12 regarding iOS 15, and was otherwise engaged in deceptive, common business practices, Apple
 13 would have been unable to continue that business and it would have been forced to disclose the
 14 performance degradation in its devices caused by iOS 15. Instead, Apple represented that the
 15 performance of its iPhone 7 Devices was continually improving due to iOS 15, or was maintained
 16 while receiving other benefits. Plaintiff and the Louisiana Subclass members acted reasonably in
 17 relying on Apple's misrepresentations and omissions, the truth of which they could not have
 18 discovered.

19 162. As a direct and proximate result of Apple's unfair and deceptive acts and
 20 practices, Plaintiff and Louisiana Subclass members have suffered and will continue to suffer
 21 injury, ascertainable losses of money or property, and monetary and non-monetary damages.

22 163. Plaintiff and Louisiana Subclass members suffered damages as a result of Apple's
 23 actions, including as described in Paragraphs 91 and 107-10 above. Plaintiff seeks all damages
 24 available as a result of Apple's violation of the Louisiana CPL.

25 **CLAIMS ON BEHALF OF THE NORTH CAROLINA SUBCLASS**

26 **COUNT IX**

NORTH CAROLINA UNFAIR TRADE PRACTICES ACT
N.C. GEN. STAT. ANN. §§ 75-1.1, ET SEQ.

164. The North Carolina Plaintiff identified above (“Plaintiff,” for purposes of this Count), individually and on behalf of the North Carolina Subclass, realleges and incorporates by reference each of the above paragraphs as if fully set forth herein.

165. Apple advertised, offered, or sold goods or services in North Carolina and engaged in trade or commerce directly or indirectly affecting the people of North Carolina, as defined by N.C. Gen. Stat. Ann. § 75-1.1(b).

166. Apple engaged in unfair and deceptive acts and practices in or affecting commerce, in violation of N.C. Gen. Stat. Ann. § 75-1.1, as described herein.

167. Apple’s representations and omissions were material because they were likely to deceive reasonable consumers.

168. Apple intended to mislead Plaintiff and North Carolina Subclass members and induce them to rely on its misrepresentations and omissions.

169. Had Apple disclosed to Plaintiff and North Carolina Subclass members that it misrepresented the iPhone 7 Devices and iOS 15, omitted material information regarding the performance degradation of the iPhone Devices caused by iOS 15, omitted material information regarding iOS 15, and was otherwise engaged in deceptive, common business practices, Apple would have been unable to continue that business and it would have been forced to disclose the performance degradation in its devices caused by iOS 15. Instead, Apple represented that the performance of its iPhone 7 Devices was continually improving due to iOS 15, or was maintained while receiving other benefits. Plaintiff and the North Carolina Subclass members acted reasonably in relying on Apple’s misrepresentations and omissions, the truth of which they could not have discovered.

170. Apple acted intentionally, knowingly, and maliciously to violate North Carolina’s Unfair Trade Practices Act, and recklessly disregarded Plaintiff and North Carolina Subclass members’ rights. Apple’s knowledge of the performance degradation on the iPhone 7 Devices

1 caused by iOS 15 put it on notice that iOS 15 and the iPhone 7 Devices were not as Apple
2 advertised.

3 171. As a direct and proximate result of Apple's unfair and deceptive acts and
4 practices, Plaintiff and North Carolina Subclass members have suffered and will continue to
5 suffer injury, ascertainable losses of money or property, and monetary and non-monetary
6 damages.

7 172. Apple's conduct as alleged herein was continuous, such that after the first
8 violations of the provisions pled herein, each week that the violations continued constitute
9 separate offenses pursuant to N.C. Gen. Stat. Ann. § 75-8.

10 173. Plaintiff and North Carolina Subclass members suffered damages as a result of
11 Apple's actions, including as described in Paragraphs 91 and 107-10 above. Plaintiff seeks all
12 damages available as a result of Apple's violation of the North Carolina Unfair Trade Practices
13 Act.

14 **CLAIMS ON BEHALF OF THE VIRGINIA SUBCLASS**

15 **COUNT X**

16 **VIRGINIA CONSUMER PROTECTION ACT**

17 **VA. CODE ANN. §§ 59.1-196, ET SEQ.**

18 174. The Virginia Plaintiff identified above ("Plaintiff," for purposes of this Count),
19 individually and on behalf of the Virginia Subclass, reallege and incorporate by reference each
20 of the above paragraphs as if fully set forth herein.

21 175. The Virginia Consumer Protection Act prohibits "[u]sing any . . . deception, fraud,
22 false pretense, false promise, or misrepresentation in connection with a consumer transaction."
23 Va. Code Ann. § 59.1-200(14).

24 176. Apple is a "person" as defined by Va. Code Ann. § 59.1-198.

25 177. Apple is a "supplier" as defined by Va. Code Ann. § 59.1-198.

26 178. Apple engaged in the complained-of conduct in connection with "consumer
27 transactions" with regard to "goods" and "services," as defined by Va. Code Ann. § 59.1-198.

1 Apple advertised, offered, or sold goods and services used primarily for personal, family or
2 household purposes.

3 179. Apple engaged in deceptive acts and practices by using deception, fraud, false
4 pretense, false promise, and misrepresentation in connection with consumer transactions,
5 described herein.

6 180. Apple intended to mislead Plaintiff and Virginia Subclass members and induce
7 them to rely on its misrepresentations and omissions.

8 181. Apple's representations and omissions were material because they were likely to
9 deceive reasonable consumers.

10 182. Had Apple disclosed to Plaintiff and Virginia Subclass members that it
11 misrepresented the iPhone 7 Devices and iOS 15, omitted material information regarding the
12 performance degradation of the iPhone 7 Devices caused by iOS 15, omitted material information
13 regarding iOS 15, and was otherwise engaged in deceptive, common business practices, Apple
14 would have been unable to continue that business and it would have been forced to disclose the
15 performance degradation in its devices caused by iOS 15. Instead, Apple represented that the
16 performance of the iPhone 7 Devices was continually improving due to iOS 15, or was
17 maintained while receiving other benefits. Plaintiff and the Virginia Subclass members acted
18 reasonably in relying on Apple's misrepresentations and omissions, the truth of which they could
19 not have discovered.

20 183. Apple had a duty to disclose these facts due to the circumstances of this case.
21 Apple's duty to disclose also arose from its:

- 22 a. Possession of exclusive knowledge regarding the degradation of the performance of the
23 iPhone 7 Devices caused by iOS 15;
- 24 b. Active concealment of the degradation of the performance of the iPhone 7 Devices
25 caused by iOS 15 and purpose of iOS 15; and
- 26 c. Incomplete representations about the iPhone 7 Devices, iOS 15, and the impact that
27 iOS 15 had on the performance of the iPhone 7 Devices.

1 184. The above-described deceptive acts and practices also violated the following
2 provisions of VA Code § 59.1-200(A):

- 3 a. Misrepresenting that goods or services have certain quantities, characteristics,
4 ingredients, uses, or benefits;
- 5 b. Misrepresenting that goods or services are of a particular standard, quality, grade, style,
6 or model; and
- 7 c. Advertising goods or services with intent not to sell them as advertised, or with intent
8 not to sell them upon the terms advertised.

9 185. Apple acted intentionally, knowingly, and maliciously to violate Virginia's
10 Consumer Protection Act, and recklessly disregarded Plaintiff and Virginia Subclass members'
11 rights. Apple's knowledge of the iPhone 7 Devices' performance issues caused by iOS 15 put it
12 on notice that the devices and iOS 15 were not as Apple advertised.

13 186. As a direct and proximate result of Apple's deceptive acts or practices, Plaintiff
14 and Virginia Subclass members have suffered and will continue to suffer injury, ascertainable
15 losses of money or property, and monetary and non-monetary damages.

16 187. Apple's violations present a continuing risk to Plaintiff and Virginia Subclass
17 members as well as to the general public.

18 188. Plaintiff and Virginia Subclass members suffered damages as a result of Apple's
19 actions, including as described in Paragraphs 91 and 107-10 above. Plaintiff seeks all damages
20 available as a result of Apple's violation of the Virginia Consumer Protection Act.

21 **VII. PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiffs, individually and on behalf of all other Class Members,
23 respectfully request that the Court enter an Order:

24 A. Declaring that this action is a proper class action, certifying the Class and/or
25 Subclasses as requested herein, designating Plaintiffs as Class Representatives, and appointing
26 Plaintiffs' attorneys as Class Counsel;

27 B. Enjoining Apple from continuing the unlawful practices alleged herein;

C. Ordering Apple to pay actual and statutory damages (including treble and/or punitive damages) and restitution to Plaintiffs and the other class members, as allowable by law;

D. Ordering Apple to pay both pre- and post-judgment interest on any amounts awarded;

E. Ordering Apple to pay attorneys' fees and costs of suit, including as provided for under the causes of action described above and under California Code of Civil Procedure § 1021.5;

F. Ordering injunctive relief and other appropriate equitable relief; and

G. Ordering such other and further relief as may be just and proper.

VIII. DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated: August 2, 2023

Respectfully submitted,

POMERANTZ LLP

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